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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 68.4(a) of the Commission's Rules Hearing Aid Campatible Telephones	)	RM No. 8658

To: Wireless Telecommunications Bureau

Cc: E Wendy Austries
Policy Division
Room 3-B1-101

REPLY COMMENTS OF GENE A. BECHTEL

1. These reply comments relate to the comments filed by Verizon Wireless ("Verizon") and the Cellular Telecommunications & Internet Association ("CTIA") dated December 8, 2000.

2. Both parties cite the statutory criteria for revoking or limiting the exemption from the hearing aid-compatibility requirement for telephones used with public mobile radio services. Verizon at 5-6, CTIA at 4-5. However, neither party provides a reasoned analysis of those criteria in relation to the issue of reopening the 1995 rulemaking proceeding sought by the Wireless Access Coalition and supported by all parties filing comments except Verizon and CTIA. Each of the criteria will be discussed in turn.

3. Public interest. This criterion supports revocation or limitation of the exemption upon an agency determination that such action would be in the public interest. 47 U.S.C. 610(b)(1)(C)(i). Neither Verizon nor CTIA addresses the public interest at work here. Manifestly, that factor favors termination of the exemption.

4. In the Telecommunications for Disabled Act of 1982, the Hearing Aid Compatibility Act of 1988 and the Telecommunications Act of 1996, the Congress with the concurrence of three Presidents has repeatedly made clear its will that access to state-of-the-art telecommunications facilities and services for hearing impaired individuals is an important national priority. Notwithstanding all of this legislation and all of the regulatory activities of the Access Board and the Federal Communications Commission throughout the years, the hearing impaired citizens of our nation still do not have access to wireless digital telephony that is remotely on par with the access enjoyed by all other citizens. The "public interest" criterion, listed first in the statute, stands squarely for termination of the exemption.

5. Adverse effect on hearing-impaired persons. This criterion supports revocation or limitation of the exemption upon an agency determination that continuation of the exemption would have an adverse affect on hearing-impaired individuals. 47 U.S.C. 610(b)(1)(C)(ii). Neither Verizon nor CTIA addresses the "adverse effect" at work here. Manifestly, this factor favors termination of the exemption as well.

6. When the Commission looked at the issue in 1995, the United States was on the verge of entry into the world of wireless digital telephony -- indeed, the argument was made that the exemption should be terminated then in order to force the selection of wireless digital systems that would be consistent with the needs of the hearing impaired before non-conforming

systems became imbedded in the new telecommunications infrastructure. That argument did not prevail and the wireless digital program developed undeterred by any requirement of compatibility.

7. Since 1995, wireless digital telephony has experienced unprecedented explosive growth and advances both economically and in the technical state-of-the-art. This incredible new telecommunications world has been brought about by -- and to the benefit of -- some of the most powerful and technically competent businesses in the nation. And yet, access to that new telecommunications world for the hearing impaired has remained at the starting gate. The hearing impaired community is without substantial opportunities for access to wireless digital telephones. The "adverse effect" criterion stands squarely for termination of the exemption.

8. Increased costs precluding successful marketing. This criterion would defeat revocation or limitation of the exemption upon an agency determination that compliance with compatibility requirements would increase costs of the affected telephones to such extent that they could not be successfully marketed. 47 U.S.C. 610(b)(1)(C)(iv). Neither Verizon nor CTIA relies on this criterion. For certain, neither has alleged or claimed that cost increases would render the subject telephones unmarketable. Nor have they alleged or claimed that the agency's determination to revoke the exemption would be undermined by consideration of costs and benefits to all telephone users or by consideration of

the use and improvement of technologies as provided in 47 U.S.C. §610(f). Under these circumstances and given the wildly successful marketing of wireless digital telephones that has taken place over the past five years, there is no discernible reason for the agency to consider this criterion a bar to termination of the exemption. In any event, reopening the exemption rulemaking proceeding will afford the industry an opportunity to make whatever case it may have for a continued exemption due to prohibitive marketing costs.

9. Technological feasibility. This criterion calls for an agency determination that compliance with the compatiblity requirements is technologically feasible. 47 U.S.C. 610(b)(1)(C)(iii). This is the only statutory factor relied on by Verizon and CTIA. Their reliance must be taken with a large grain of salt.

10. In 1995, wireless digital telephony was just emerging and the precise nature of the fundamental technology that would be employed was uncertain. The FCC had then recently concluded multi-year proceedings relative to some 50 or 60 different technologies or contributions to technologies that potentially could be employed. The engineering bases of the infrastructure were at the embryonic stage. At that point in time, it may have been understandable to cut the industry some slack in terms of full compliance with the requirements of compatibility.

11. But, in the year 2001, such beneficence to the industry cannot be tolerated. During the past five years, there has been

an incredible explosion in wireless digital telephone technology. Mega-billion dollar companies with mega-billion dollar profits are possessed of the world's finest technical resources and capacities. They have flooded the marketplace with a bewildering array of innovative and competitive telephones, telephone gear, accessories, systems, options, choices, etc. etc. Their marketing success has been so enormous as to be central to the nation's robust economy during the past five years.

12. In light of all of this technological firepower and success in innovative systems and facilities, the industry should not be permitted to continue to rely on the "technological feasibility" criterion without a most compelling showing. Such a showing has not been made here, to say the least. Verizon at 2-5 provides a rudimentary description of the analog induction coil in relation to digital transmission, at 6-8 provides a brief description of two non-conforming devices that have appeared in the marketplace, and at 9 states the summary conclusion that there is no "internal solution" to compatibility "given the current state of technology." CTIA at 1-3 provides a brief summary of certain activity since 1996 including the University of Oklahoma research project, at 5-8 summarizes a recent conference telephone call, and at 9 states the summary conclusion "it would be premature for the Commision to commence a rule making proceeding at this time."

13. The law of the land mandates that the Federal Communications Commission must review the ongoing status of the

exemption. 47 U.S.C. 610(b)(1)(C). The FCC in effect gave the industry the past five years to establish and exploit the new technology under that exemption. Now, when concerned representatives of the hearing impaired community have come to the agency to reopen consideration of the exemption in the milieu of all that has transpired, that is all Verizon and CTIA have to say...and no other parties in the industry have anything to say at all.

14. Given the enormous success which the industry has demonstrated over the past five years in finding, inventing, creating and developing commercially-attractive technological innovations, the stance of an inability to find, invent, create or develop innovations to provide compatibility for the non-commercially-attractive hearing impaired market cannot be accepted. The exemption rulemaking proceeding should be reopened; the burden of going forward with the evidence and the burden of persuasion should be on the industry parties; they should be required to establish by documented and convincing evidence (a) that they have brought their best technical capacities fully to bear on the cause of compatibility compliance without regard to its non-lucrative nature and (b) that technical feasibility of such compliance is absolutely beyond their ability; and that evidence should be the subject of searching scrutiny.[1]

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[1] If proprietary protection is required for eliciting full details, the Commission has rules and procedures to afford such protection.

15. An important regulatory principle supports reopening the rulemaking procedure at this juncture. That is -- priming the pump. The development of advanced digital telephones for the hearing impaired is not a major motivational marketing objective of the commercial telephone industry. It may never be. As the federal legislation came down in the 1980's and again in the 1990's, the commercial telephone industry acted in the matter when it had to. Each time the FCC adopted new, tougher regulations under the Hearing Aid Compatibility Act, often over objections by affected industry parties, some progress was made. E.g., Hearing Aid Compatibility, 67 R.R.2d 1183 (1990) (credit card telephones and telephones in common areas); Hearing Aid Compatibility, 70 R.R.2d 1214 (1970) (telephones in the work place, hotels, health care facilities and prisons); Hearing Aid Compatible Telephones, 3 Comm. Reg. 766 (1996) (telephones in the work place, confined settings, hotels and motels, cost of compliance; volume control; equipment labeling; consumer education). When the FCC invoked a statutory negotiated rulemaking mechanism, some progress was made. E.g., action in March 1995 antecedent to the 1996 Report and Order just cited, 3 Comm. Reg. at 771.

16. The instant round of pleadings provides two apparent examples of this regulatory peristalsis. For an extended period of time, the adoption of final ANSI C63.19 standards has languished. The instant petition was filed by the Wireless Access Coalition in October 2000. Shortly thereafter, in

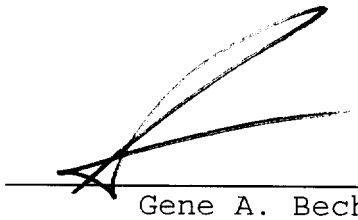
December 2000, CTIA announced that those standards will be adopted "in late January." CTIA Comments at 3. Also, the petition of the Wireless Access Coalition is dated "October 7, 2000." Sometime in "October 2000" (the precise date is not specified), CTIA convened a conference telephone call to review numerous advances that were being made in research and development relative to compatibility, summarized in its pleading. CTIA Comments at 6-7.

17. The foregoing passages are not intended to find fault with the commercial telephone industry, which is not eleemosynary in nature. This is the normal and natural way of the commercial world. To serve the interests of a portion of society not imbued with marketing attractiveness, the federal government must prime the pump. Twelve years after enactment of the Hearing Aid Compatibility Act and five years after the advent of wireless digital telephony, the time has come to prime the pump again. If a full and complete record establishes the industry's inability to provide compatibility notwithstanding good faith efforts with its technical knowhow and expertise unconditionally addressed to the task, then the agency review will have run its course, perhaps to be revisited in another five years as technology advances. If not, the Commission should terminate the exemption.

18. Either way, by reopening the exemption proceeding, the Commission will undertake to effectuate the statutory mandate of periodic review. If the agency declines to do so, that statutory mandate will be ignored and frustrated. This is neither sound

regulatory policy nor consistent with the nation's priority to achieve comparable access for its hearing impaired citizens.

Respectfully submitted,



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Courtesy copies mailed this date to counsel for Verizon and CTIA